

Appl. No. 09/879,440
Amdt. dated September 30, 2005
Reply to Final Office Action of June 30, 2005

**AFTER FINAL EXPEDITED PROCEDURE
REMARKS**

Claims 1 to 52 were pending in the application at the time of examination. Claims 1 to 52 stand rejected as obvious.

Applicant thanks the Examiner for clarifying the status of the Smith reference.

Claims 1 to 52 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0182650, hereinafter referred to as "Smith," in view of "Sun WorkShop TeamWare:User's Guide," Sun Microsystems, Inc. 1996, hereinafter referred to as "TeamWare."

Applicant respectfully traverses the obviousness rejection of Claim 1. To make a prima facie obviousness rejection, the MPEP directs:

BASIC CONSIDERATIONS WHICH APPLY TO OBVIOUSNESS REJECTIONS

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

MPEP § 2141, 8th Ed., Rev. 2, p. 2100-120 (May 2004). It is noted that this directive stated "the following tenets . . . must be adhered to." Accordingly, the failure to adhere to any one of these tenets means that a prima facie obviousness rejection has not been made and Claim 1 is patentable over the combination of references.

The final rejection failed to adhere to multiple of these tenets and so a prima facie obviousness rejection has not made. As demonstrated more completely below, the claimed invention has not been considered as a whole; the references have not

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been considered as a whole; and the references do not suggest the desirability of making the combination. Pieces of the references have been extracted at a level different from the level of Applicant's claims and selectively interpreted in view of Appellant's claims. Finally, there was no explanation of how the primary reference would work for its intended purpose following the modification.

In continuing the rejection of Claim 1, the Examiner stated:

. . . Smith discloses a "software development toolkit, such as the ARM Developer Suite (ADS)" to present "its users with many build options (page 7, lines 16-20" and "model the compatibility and desirability in the target execution environment of various build options parameters selected by a user (abstract: page 1, 0004)."

With all due respect, the rejection extracts parts of a description of two different things and then combines them as if only one device were being described. The ADS is a prior art toolkit. The second quote is not directed at any toolkit, but rather was:

lattice theory is used to model the compatibility and desirability

Thus, the quote at page 1 of Smith is not being used to describe the ADS toolkit, but rather the lattice theory used in "A software development system." This selective dissection of the reference and rearrangement of the reference is an explicit example that the Smith was not considered as a whole.

Moreover, the fact that the user can specify build options without more fails to teach or suggest anything concerning Claim 1. The continuing rationale for the rejection was:

The toolkit includes "library selecting logic responsive to said library selector for selecting among a plurality of machine code entities, a selected library of

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machine code entities having a best level of execution environment requirements compatible with said limiting level of execution environment requirements indicated by said library selector (pg 1, 0011)." "This library selector may be used to select a particular library of machine code entities compatible with these execution environment requirements whilst providing the most desirable machine code entities to exploit the capabilities of the target data processing system (abstract; page 1, 004)," Therefore, the user selected different build options for source code using the toolkit.
(Emphasis Added)

Claim 1 recites in part:

displaying a list of at least one group of computer programs so as to allow a user to select a group of computer programs to be built, said at least one group of computer programs having a set of specific environmental requirements in which said at least one group of computer programs is to be compiled and executed;

The above rationale fails to cite any teaching or suggestion of displaying a list of anything. Further, the rejection is relying upon a completely different level in the process of Smith--automated selection of machine code entities by elements in linker--than what is recited in the above quoted portion of Claim 1.

In particular, the rejection refers to "machine code entities." Fig. 1 of Smith, as reproduced below, shows that the machine code entities exist after the compile process, e.g., compiler 14. Also, the entities that are being selected by the library selector are located in "Libraries of Machine Code Entities 24."

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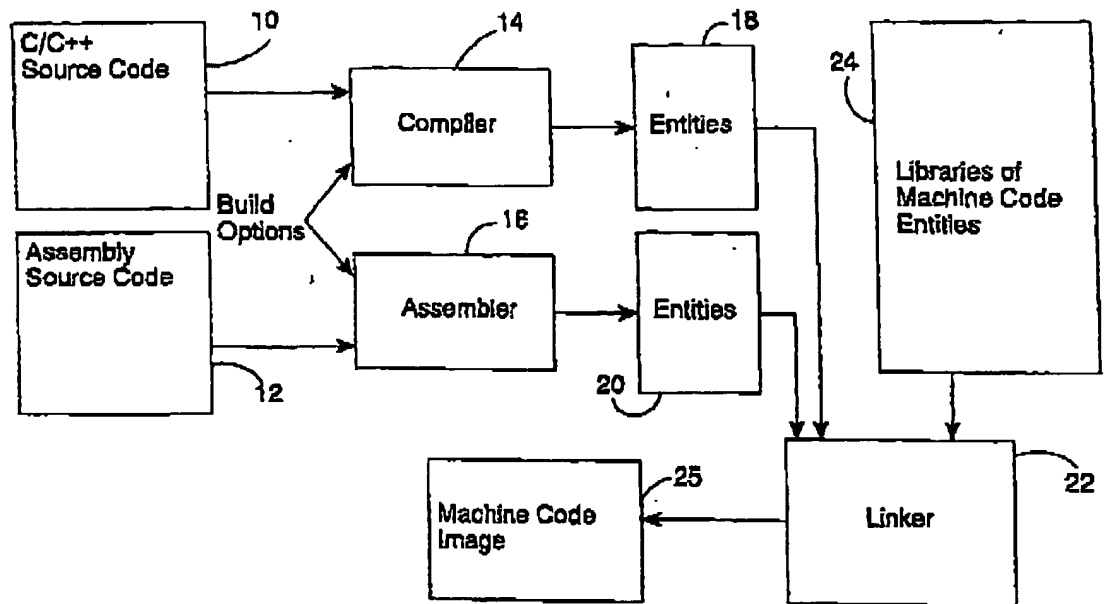


Fig.1

This Figure makes it clear that the entities, cited in the rejection, are located in libraries 24 and so have already been compiled or assembled. Thus, the code selected by the library selector is not "one group of computer programs . . . to be compiled and executed." Accordingly, the reliance of the rejection upon the library selector to select machine code entities is evidence that neither the reference nor Claim 1 has been considered as a whole. In particular, element 24 is clearly at a different functional level than the first element of Claim 1. Consequently, the rejection is not in compliance with the requirements of the MPEP as quoted above.

Moreover, the rejection has failed to even cite any teaching of a display or even a list associated with libraries 24 of Smith and instead relies solely upon

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Applicant's claim language. This is evidence that the claim language has been reduced to a gist, i.e., a computer code entities, and explicit claim limitations have not been considered. The claim language does not recite a generic list of computer program entities, but rather recites a display of a list having particular characteristics. This is yet additional evidence that the claim language has not been considered "as a whole."

In particular,

DISTILLING THE INVENTION DOWN TO A "GIST" OR "THRUST" OF AN INVENTION DISREGARDS "AS A WHOLE" REQUIREMENT

Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole."

MPEP § 2141.02, 8th Ed., Rev. 2, p. 2100-125 (May 2004).

Smith teaches that a linker, which does not compile code as shown by Fig 1 of Smith, performs this library selection. There has been no citation to any display in Smith, and the Examiner has not even asserted in this part of the rejection that Smith would be modified to provide the recited displaying operation. Since Smith teaches a selection process, as noted by the Examiner, other than that recited in Claim 1, Smith teaches away from Applicant's invention, which is yet another indicium of non-obviousness.

In the rejection of the subsequent elements of Claim 1, the rejection admits that Smith fails to teach or suggest any displaying, but argues that one of skill would combine unrelated parts of TeamWare with Smith. There are several errors in this part of the analysis.

First, the rejection stated:

. . . However, TeamWare teaches that it was known in the art of software component-based development and

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configuration . . .to visually indicate each different computers to the user

Applicant respectfully notes that the conclusion is not supported by citation to any teaching in TeamWare. Accordingly, the rejection has failed to demonstrate that the conclusion is supported by either reference.

The rejection continued:

and to distribute "builds over several hosts to build program concurrently over a number of workstations or multiple CPUs (section 20: Using Distributed Make)" such as those disclosed in TeamWare.

This selective extraction of one part of a sentence from Section 20 of TeamWare is a further demonstration that the analysis required by the MPEP has not been done, i.e., the reference has not been considered as a whole. Applicant searched Section 20 electronically for "display." The occurrences that were found in Section 20 are given in the following paragraph:

Since DMake builds multiple targets concurrently, the output of each build is produced simultaneously. To avoid intermixing the output of various commands, DMake collects output from each build separately. **DMake displays the commands before they are executed.** If an executed command generates any output, warnings, or errors, **DMake displays the entire output for that command.** Since commands started later may finish earlier, this output may be displayed in an unexpected order. (Emphasis Added)

While TeamWare does describe displaying commands before the commands are executed and displaying output generated by the execution of the commands, this teaches nothing concerning "displaying a list of a plurality of computers." There is no teaching of any user selection based upon information in a display. Therefore, to the extent that the rejection asserts

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otherwise, the rejection mischaracterizes the teaching of the reference.

Moreover, the reference explicitly teaches that information from files and not a display is used in DMake. For example, Section 20 of TeamWare teaches:

To understand DMake, you should know about the following:

- Configuration files
- Runtime
- Build server
- The DMake host
- The build server
-

Configuration Files

DMake consults two files to determine to which build servers jobs are distributed and how many jobs can be distributed to each. (Emphasis Added)

Runtime Configuration File

DMake searches for a runtime configuration file on the DMake host to know where to distribute jobs. Generally, this file is in your home directory on the DMake host and is named .dmakerc. It consists of a list of build servers and the number of jobs to be distributed to each build server. See "The DMake Host" on page 220 for more information.

Build Server Configuration File

The /etc/opt/SPROdmake/dmake.conf file is in the file system of build servers. It is used to specify the maximum total number of DMake jobs that can be distributed to it by all DMake users. See "The Build Server" on page 223 for more information

The reference explicitly states that DMake uses "two files". Accordingly, the comments in the rejection are inconsistent with the explicit teachings of the reference. Consequently, the rejection is not well founded because the rejection demonstrates that the cited TeamWare section was not considered as a whole, and instead pieces were extracted and interpreted based upon Applicant's Claim language. A general

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knowledge of a way to implement a distributed build based upon the two files described in TeamWare fails to suggest or disclose the explicit limitations in Claim 1.

Accordingly, contrary to the assertions in the rejection, when a correct "as a whole analysis is done," the primary reference has defects that are not corrected by the secondary reference and the secondary reference fails to support the interpretation in the rejection. The primary reference fails to teach or suggest the first element of Claim 1. The use of two files as quoted above from the second reference fails to support the conclusions in the rejection and fails to correct the deficiencies of the primary reference.

Finally, there has been no showing how information in files for a distributed make operation in the secondary reference would be combined into the library selector of the primary reference. Information in input files for a distributed make operation teaches or suggests nothing concerning how to modify the linker relied upon in the primary reference. In fact, it has not been demonstrated that the process in the primary reference would work for its intended purpose in a distributed environment. Accordingly, the combination of references requires numerous redefinitions and modifications to both references that are unsupported in the rejection. Thus, Applicant respectfully submits that on multiple levels the combination of references is not well founded. Applicant requests reconsideration and withdrawal of the obviousness rejection of Claim 1.

Claims 2 to 17 depend from Claim 1 and so distinguish over Smith for at least the same reasons as the claims upon which they depend. Applicant requests reconsideration and withdrawal of the obviousness rejection of each of Claims 2 to 17.

Claim 18 recites in part "a computer selector, responsive to the user's selection of a computer . . ." Claim 18 stands rejected under the same rationale as Claim 1. The above

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comments with respect to Claim 1 are incorporated herein by reference. In particular, the Examiner has failed to cite any teaching or suggestion of a computer selector, and moreover, as quoted above, Smith alone or in combination with TeamWare teaches away from such a tool. Applicant requests reconsideration and withdrawal of the obviousness rejection of Claim 18.

Claims 19 to 34 depend from Claim 18 and so distinguish over the combination of references for at least the same reasons as the claims upon which they depend. Applicant requests reconsideration and withdrawal of the anticipation rejection of each of Claims 19 to 34.

Claim 35 recites "means for designating a capable computer in response to the user's selection of a computer" Claim 35 stands rejected under the same rationale as Claim 1. The above comments with respect to Claim 1 are incorporated herein by reference. In particular, the Examiner has failed to cite any teaching or suggestion of this means. Applicant requests reconsideration and withdrawal of the obviousness rejection of Claim 35.

Claims 36 to 51 depend from Claim 35 and so distinguish over the combination of references for at least the same reasons as the claims upon which they depend. Applicant requests reconsideration and withdrawal of the anticipation rejection of each of Claims 36 to 51.

Claim 52 recites "designating a capable computer in response to the user's selection of a computer" Claim 52 stands rejected under the same rationale as Claim 1. The above comments with respect to Claim 1 are incorporated herein by reference. In particular, the Examiner has failed to cite any teaching or suggestion of this means. Applicant requests reconsideration and withdrawal of the obviousness rejection of Claim 52.

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Claims 1 to 52 remain in the application. For the foregoing reasons, Applicant(s) respectfully request allowance of all pending claims. If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).

CERTIFICATION OF FACSIMILE TRANSMISSION
I hereby certify this paper is being facsimile transmitted to the Patent and Trademark Office (fax No. 571-273-8300) on the date shown below:

Respectfully submitted,



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